

MONTANA'S FIRST YEAR WITH A STREAM PRESERVATION ACT

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All fish and game biologists know the importance of habitat. Whether we talk about rabbits, rhinoceros, or rainbow trout, good habitat is essential to the continued production of a game species. However, legislation to protect fish and game habitat is not universal, as most of us in this group would believe it should be. Fish and game biologists do not generally enact legislation and legislators (and most of the people who elect them) do not generally understand fish and game habitat. I believe this condition is primarily the fault of biologists and their administrators and not of legislators and their constituents. Like the dub angler who finds it easier to gripe about his poor fishing success than to plan a concerted effort to improve his skill, we find it easier to gripe among ourselves about the inadequacy of our laws than to plan a concerted effort to present our problem to the people who make the laws. A brief summary of how Montana got its Stream Preservation Act will illustrate this point. This summary concerns our activities at a State level only. We have also made a less concerted effort at the Federal level.

Montana's first fisheries biologist started in 1947, and our primary job in the 1950's was general survey and inventory. During this period several important, but isolated evaluations of stream habitat were made. In Trout Creek, trout decreased 33% after removal of undercut banks and 58% after brush removal (Boussu, 1954). Following highway rechanneling of a 300-foot section of Flint Creek, six-inch and larger trout were reduced from 69 to 6 (Whitney and Bailey, 1959). After rechanneling for flood control on a sampling section of Rock Creek, a 75-pound-per-acre reduction of trout was measured and 17 miles of such rechanneling were recorded on the stream (Nelson and Hill, 1960).

These and other data were presented at sportsmen's meetings and in many department publications. They were presented with Montana's stream rating map which showed how much less than our often-advertised, 32,000 miles of top-quality trout streams we actually had. But department publications and sportsmen's meetings did not reach enough people and several isolated instances of damage did not adequately emphasize the problem. We, and some of our sportsmen friends knew the need to protect stream habitat, but protective legislation did not happen.

In the spring of 1961, our I & E and Fisheries Divisions planned an all out effort to sell the need for legislation to protect stream-fish habitat. Fisheries supplied measurements and details of 251 miles of channel alterations on 768 miles of 13 streams by late 1962 (Alvord and Peters, 1963). I & E prepared a standard slide series on stream habitat and presented this series and the channel alteration data to many different groups and organizations. A wide segment of Montana was made aware of the stream-habitat problem and the bill that was necessary to solve it. Primarily three groups (the State Junior Chamber of Commerce, the Montana Wildlife Federation, and the Western Montana Fish and Game Association) carried the fight for a specific bill to the legislature.

Opposition from constructing agencies and individuals was heavy and the proposed bill was modified many times, but the legislature did pass a workable, stream-preservation act. Only agencies of state, county and city governments are covered and of these, the State Water Board and any irrigation project are exempted. There is a two-year time limit on the Act. However, it is a fair, workable law for the portion of streamside construction which it covers and we feel that Montana's trout have won one round in the battle with the bulldozer. Referring to this battle last year, Mr. Calhoun said, " . . .the greatest hope seems to be an informed public demanding protection of trout streams and the fish they contain." (Calhoun, 1963). We in Montana agree. This is the way we got a Stream Preservation Act and it is the only way we will keep it.

Briefly, Montana's Stream Preservation Act provides that:

1. It is state policy that fishing waters are to be protected and preserved.
2. Any state agency must notify the Montana Fish and Game Department of its plans 60 days or more prior to construction of any project which will affect a stream channel.
3. If plans are inadequate, the Commission must furnish aid in preparing adequate plans.
4. Within 30 days after receiving plans, the Commission must notify the applicant if construction will adversely affect fish or game habitat. If it will the Commission must give alternate plans or recommendations for mitigating loss.
5. Within 15 days after receiving alternate plans or recommendations, the applicant shall notify the Fish and Game Commission if it refuses to modify its plans. The Commission and applicant must each pick one arbitrator within 10 days and these two persons must pick a third arbitrator within five days after their appointment. Within 10 days after being designated, this board must meet, hear testimony and issue a decision which shall be binding on all parties concerned.

From July 1, 1963, the effective date of Montana's Stream Preservation Act, through June 30, 1964, we have received 34 legal notices of construction projects which affect streams. The following outline categorizes these 34 projects.

- I. Three came from cities or counties.
 - A. Two of these were approved without change.
 1. One was least detrimental as planned.
 2. One was detrimental to an unimportant stream.

B. Our recommended line change on one was accepted by the county.

II. Thirty-one came from the Montana Highway Department.

A. Twenty-two of these were approved without change.

1. Seven of the 22 were least detrimental as planned.

2. Fifteen of the 22 were detrimental to unimportant streams.

B. Changes were recommended on nine projects.

1. On six of these we have reached agreement. These have included a line change on one, the addition of bridges to save a meander on one, replacement of lost channel on one, and the addition of mitigation structures and access areas on three.

2. On three projects, no agreement has been reached.

The arbitration provided for by the Act has never been used. We must be notified of refusal to modify plans before we can ask for arbitration, and we have never received such refusal. The Highway Department has told us in meetings that they would not submit to arbitration because if the decision went against them, they could not justify building their roads according to our recommendations. One of the three disputed projects has been cancelled and the other two (which are really one project) are awaiting a decision from the Northern Pacific Railroad which is also planning some construction in the project area. However, we have been blamed in the press for the delay (which is presently 5 to 8 months) on two projects. We have been accused of holding up millions of dollars worth of highway work and of being a bottleneck to Montana's highway construction program.

We believe our record shows that these accusations are not true and that the present act is valuable, workable and fair.

Within the time limit specified by the Act we have approved 70 percent of the projects submitted and have negotiated changes or mitigation measures on 21 percent. Only 9 percent of the projects are being delayed as of June 30, 1964, and these could have been resolved any time the constructing agency desired by using the arbitration which is provided for in the Act.

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